

Respondent.

The Director filed a motion for summary decision on January 8, 2014. We notified Schuler that he should file any response by February 5, 2014, but he filed nothing.

We may grant a motion for summary decision if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts. 1 CSR 15-3.446(6)(A).<sup>1</sup> Parties may establish a fact, or raise a dispute as to such facts, by admissible evidence. 1 CSR 15-3.446(6)(B). By failing to respond to the motion for summary decision, Schuler has failed to raise a genuine issue as to the facts the Director established in his motion. *Id.*

The Director relies on the documents submitted with the motion: the Director's affidavit of Schuler's licensure and a copy of the unanswered request for admissions. Because Schuler did not respond to the request for admissions, he admitted each matter contained therein. Missouri Supreme Court Rule 59.01(a). Section 536.073<sup>2</sup> and our Regulation 1 CSR 15-3.420(1) apply that rule to this case.

The matters admitted under Rule 59.01 bind the party to whom the requests were addressed and eliminate the need for further proof of the matters admitted. *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo.App. W.D., 1985), *quoted in Dynamic Computer Solutions, Inc. v. Midwest Marketing Ins. Agency, L.L.C.*, 91 S.W.3d 708, 715 (Mo.App. W.D., 2002). Such a deemed admission can establish any fact, or "application of the facts to the law, or the truth of the ultimate issue, opinion or conclusion, so long as the opinion called for is not an abstract proposition of law." *Briggs v. King*, 714 S.W.2d 694, 697 (Mo. App., W.D. 1986).

The rule that matters admitted under Rule 59.01 bind the party to whom the requests were addressed applies also to *pro se* parties. *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo.

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<sup>1</sup> All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

<sup>2</sup> RSMo 2000. Statutory references are to RSMo Supp. 2013 unless otherwise noted.

App., W.D. 1983); *see Welty v. State Bd. of Chiropractic Examiners*, 759 S.W.2d 295, 299 (Mo. App. W.D. 1988) (applying the rule to a pro se party in a proceeding before this Commission).

Accordingly, the following findings of fact are undisputed.

### **Findings of Fact**

1. Schuler holds a peace officer license issued by the Director that has been current and active since March 30, 2005.

2. On April 9, 2010, in Howard County, Missouri, Schuler operated a motor vehicle while intoxicated, in violation of § 577.010. He also supplied intoxicating liquor to individuals under age twenty-one, in violation of § 311.310.1.

### **Conclusions of Law**

We have jurisdiction over this case. Section 590.080.2. The Director has the burden of proving that Schuler has committed an act for which the law allows discipline. *See Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

The Director alleges that there is cause for discipline under § 590.080:

1. The director shall have cause to discipline any peace officer licensee who:

\* \* \*

(2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]

By failing to respond to the Director's admissions, Schuler has admitted that he committed the crimes of driving while intoxicated and supplying intoxicating liquor to minors. He is subject to discipline under § 590.080.1(2).

In his answer, Schuler states, "I hereby request my post to be revoked." The role of this Commission is to determine whether there is cause to discipline Schuler's license. The Director

retains discretion to determine the appropriate discipline after cause has been found. § 590.080.2 and .3.

### **Summary**

There is cause to discipline Schuler's license under § 590.080.1(2).

SO ORDERED on March 7, 2014.

*\s\ Karen A. Winn*

KAREN A. WINN

Commissioner